## K1u1clap UNITED STATES DISTRICT COURT 1 SOUTHERN DISTRICT OF NEW YORK 2 3 UNITED STATES OF AMERICA, 4 15 Cr. 866 (WHP) v. 5 ROGER THOMAS CLARK, 6 Defendant. Plea -----x 7 8 New York, N.Y. January 30, 2020 9 3:11 p.m. 10 Before: 11 HON. WILLIAM H. PAULEY III, 12 District Judge 13 14 **APPEARANCES** 15 GEOFFREY S. BERMAN United States Attorney for the Southern District of New York 16 BY: MICHAEL D. NEFF 17 VLADISLAV VAINBERG Assistant United States Attorneys 18 STEPHANIE M. CARVLIN, ESQ. 19 Attorney for Defendant 20 ALSO PRESENT: GARY ALFORD, Special Agent, Supervisory, IRS 21 MARK RUBINS, Detective/Task Force Officer, FBI 22 23 24 25

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(Case called) 1 2 THE DEPUTY CLERK: Appearances. 3 MR. NEFF: Good afternoon, your Honor. Michael Neff 4 and Vlad Vainberg for the government, and we are joined at counsel table by supervisory special agent Gary Alford from the 5 IRS and task force officer Mark Rubins. 6 7 THE COURT: All right. Good afternoon, gentlemen. 8 MS. CARVLIN: Good afternoon, your Honor. Stephanie 9 Carvlin for Roger Clark. At counsel's table with me is Mr. Clark. 10 11 THE COURT: Good afternoon to you, Ms. Carvlin. 12 note the presence of the defendant, Roger Thomas Clark, at 13 counsel table. 14 Ms. Carvlin, I'm informed that the defendant has an 15 application. What is that application? MS. CARVLIN: That application, your Honor, is to 16 17 withdraw his previously entered plea of not quilty and enter a 18 plea of guilty to a lesser included offense of Count One. 19 THE COURT: And is this plea pursuant to a plea 20 agreement? 21 MS. CARVLIN: It is, your Honor. 22 THE COURT: The record should reflect that a plea 23 agreement has been handed up to me for inspection.

Ms. Carvlin, prior to the commencement of this proceeding, did you review with your client an Advice of Rights

## K1u1clap form? 1 2 MS. CARVLIN: I did, your Honor. 3 THE COURT: And did he sign it in your presence? 4 MS. CARVLIN: He did, your Honor. 5 THE COURT: And did you sign it as his attorney? 6 MS. CARVLIN: I did. 7 THE COURT: The record should reflect that an Advice of Rights form has been marked as Court Exhibit 1 and handed to 8 9 me for inspection. 10 So at this time I'm going to ask my deputy to administer the oath to the defendant. 11 12 THE DEPUTY CLERK: Please stand and raise your right 13 hand. 14 (Defendant sworn) 15 THE COURT: Mr. Clark, do you understand, sir, that you're now under oath and that if you answer any of my 16 17 questions falsely, your false or untrue answers may later be

used against you in another prosecution for perjury or making a false statement?

THE DEFENDANT: I do.

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THE COURT: Very well. Please be seated.

Mr. Clark, for the record, what is your full name?

THE DEFENDANT: Roger Thomas Clark.

THE COURT: And how old are you?

THE DEFENDANT: 58.

1	THE COURT: And if you'd get a little closer to the
2	microphone.
3	How far did you go in school, sir?
4	THE DEFENDANT: High school.
5	THE COURT: And are you able to read, write, speak,
6	and understand English?
7	THE DEFENDANT: I am.
8	THE COURT: Now are you now or have you recently been
9	under the care of a doctor or a psychiatrist?
10	THE DEFENDANT: No.
11	THE COURT: Have you ever been treated or hospitalized
12	for any mental illness or any type of addiction, including drug
13	or alcohol addiction?
14	THE DEFENDANT: No.
15	THE COURT: In the past 24 hours have you taken any
16	drugs, medicines, or pills, or have you consumed any alcohol?
17	THE DEFENDANT: No.
18	THE COURT: Is your mind clear today?
19	THE DEFENDANT: It is.
20	THE COURT: Are you feeling all right today?
21	THE DEFENDANT: I am.
22	THE COURT: Are you represented by an attorney here
23	today?
24	THE DEFENDANT: Yes, Ms. Carvlin.
25	THE COURT: And Ms. Carvlin, do you have any doubt as

to your client's competence to plead at this time?

MS. CARVLIN: I do not, your Honor.

THE COURT: All right. Now, Mr. Clark, your attorney Ms. Carvlin has informed me that you wish to enter a plea of guilty. Do you wish to enter a plea of guilty?

THE DEFENDANT: I do, your Honor.

THE COURT: Have you had a full opportunity to discuss your case with your attorney and to discuss the consequences of entering a plea of guilty?

THE DEFENDANT: Yes, we have.

THE COURT: Are you satisfied with your attorney,

Ms. Carvlin, and her representation of you in this matter?

THE DEFENDANT: I am.

THE COURT: On the basis of Mr. Clark's responses to my questions and my observations of his demeanor here in my courtroom this afternoon, I find that he's fully competent to enter an informed plea at this time.

Now before I accept any plea from you, Mr. Clark, I'm going to ask you certain questions. My questions are intended to satisfy me that you wish to plead guilty because you are guilty and that you fully understand the consequences of your plea. I'm going to describe to you certain rights that you have under the Constitution and laws of the United States, which rights you'll be giving up if you enter a plea of guilty. Please listen carefully. If you do not understand something I

am saying or describing, then stop me, and either I or your attorney, Ms. Carvlin, will explain it to you more fully. Do you understand this, sir?

THE DEFENDANT: I do.

THE COURT: All right. Under the Constitution and laws of the United States, you have a right to a speedy and public trial by a jury on the charges against you which are contained in the superseding indictment. Do you understand that?

THE DEFENDANT: I do.

THE COURT: And if there were a trial, you would be presumed innocent, and the government would be required to prove you guilty by competent evidence beyond a reasonable doubt at trial in order to convict you. Do you understand that?

THE DEFENDANT: I do.

THE COURT: You would not have to prove that you were innocent at a trial. Do you understand that?

THE DEFENDANT: I do.

THE COURT: If there were a trial, a jury composed of 12 people selected from this district would have to agree unanimously that you were guilty. Do you understand that?

THE DEFENDANT: I do.

THE COURT: If there were a trial, you would have the right to be represented by an attorney, and if you could not

afford one, an attorney would be provided to you free of cost.

Do you understand that?

THE DEFENDANT: I do.

THE COURT: If there were a trial, Mr. Clark, you'd have the right to see and hear all of the witnesses against you, and your attorney could cross-examine them. You would have the right to have your attorney object to the government's evidence and offer evidence on your behalf if you so desired, and you'd have the right to have subpoenas issued or other compulsory process used to compel witnesses to testify in your defense. Do you understand that?

THE DEFENDANT: I do.

THE COURT: If there were a trial, you'd have the right to testify if you wanted to, but no one could force you to testify if you did not want to. Further, no inference or suggestion of guilt could be drawn if you chose not to testify at trial. Do you understand that?

THE DEFENDANT: I do.

THE COURT: Do you understand, sir, that by entering a plea of guilty today that you're giving up each and every one of the rights that I've described, that you're waiving those rights, and that you'll have no trial?

THE DEFENDANT: I do.

THE COURT: Do you understand that you can change your mind right now and refuse to enter a plea of guilty?

THE DEFENDANT: Yes, I understand.

THE COURT: You do not have to enter this plea if you do not want to for any reason whatsoever. Do you understand this fully, Mr. Clark?

THE DEFENDANT: I do.

THE COURT: Now, Mr. Clark, have you received a copy of the superseding indictment?

THE DEFENDANT: I have.

THE COURT: And have you read it?

THE DEFENDANT: Yes, I did.

THE COURT: Did your attorney discuss the superseding indictment with you?

THE DEFENDANT: Yes, at length.

THE COURT: Do you waive my reading of the superseding indictment word for word here in open court?

THE DEFENDANT: I do waive.

THE COURT: Do you understand that Count One of the superseding indictment charges that from at least in or about January 2011 up to and including on or about October 2, 2013, the defendant participated in a conspiracy to distribute and possess with intent to distribute 1 kilogram and more of mixtures and substances containing a detectable amount of heroin; 5 kilograms and more of mixtures and substances containing a detectable amount of mixtures and substances containing a detectable amount of

lysergic acid diethylamide (LSD); and 500 grams and more of mixtures and substances containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of Title 21 of the United States Code Sections 812, 841(a)(1), 841(b)(1)(A), and 846. Do you understand that, sir?

THE DEFENDANT: I do understand.

THE COURT: And do you understand that if you did not plead guilty, the government would have to prove each and every part or element of this narcotics conspiracy charged in Count One by competent evidence beyond a reasonable doubt?

THE DEFENDANT: I do.

THE COURT: And Mr. Neff, for the benefit of the Court and the defendant, would you describe the essential elements of the offense charged.

MR. NEFF: Yes, your Honor. And I should note that under the plea agreement, as the Court is aware, the defendant will be pleading to a lesser included charge within Count One, so as a result, if it's acceptable, I won't mention the weights.

But to prove the defendant guilty of the charge in the plea agreement, the lesser included offense, the government would need to prove two elements beyond a reasonable doubt:

First, that there was an agreement between two or more people to violate the narcotics laws of the United States --

specifically, an agreement to distribute heroin, cocaine, LSD, and methamphetamine; and

Second, that the defendant personally joined that conspiracy understanding its illegal objective; in other words, understanding that it was about distributing those drugs I just mentioned.

Those are the two elements. And in addition, the government would need to prove that venue is appropriate here in the Southern District of New York, and venue, of course, is by a preponderance only.

THE COURT: Thank you, Mr. Neff.

Mr. Clark, have you listened closely to Assistant
United States Attorney Neff as he's described the essential
elements of the lesser included offense that the government is
willing to accept here under the terms of the plea agreement in
this case?

THE DEFENDANT: I have.

THE COURT: And do you understand, sir, that the government would be required to prove those elements by competent evidence beyond a reasonable doubt at trial in order to convict you?

THE DEFENDANT: I do.

THE COURT: Now do you understand, sir, that the maximum possible penalty for the lesser included offense to which the government is willing to accept a plea is 20 years of

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imprisonment, followed by a maximum term of lifetime supervised release, and/or a mandatory minimum term of three years of supervised release, together with a maximum fine of the greatest of \$1 million or twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss to persons other than yourself resulting from the offense, and a \$100 mandatory special assessment? Do you understand that?

THE DEFENDANT: I do.

THE COURT: Also, by the way, supervised release means that you'll be subject to monitoring when you are released from prison, the monitoring to be under terms and conditions which could lead to reimprisonment without a jury trial for all or part of the term of supervised release, without credit for time previously served on postrelease supervision if you violate the terms and conditions of supervised release. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you also understand that under the terms of this plea agreement that this Court must order restitution in this case to the victims of your crime?

THE DEFENDANT: Yes.

THE COURT: And do you also understand that under the terms of this agreement, you are admitting to the forfeiture allegation and agreeing to forfeit to the United States any and all property constituting or derived from any proceeds obtained

directly or indirectly as a result of the narcotics conspiracy described in Count One of the indictment?

THE DEFENDANT: I'm aware.

THE COURT: All right. As well as any property used or intended to be used in any manner to commit or to facilitate the commission of the offense alleged in Count One? Do you understand that?

THE DEFENDANT: I do.

THE COURT: Now are you a citizen of the United States?

THE DEFENDANT: I am not.

THE COURT: Do you understand that another consequence of pleading guilty here is that you will be deported from the United States upon the completion of your term of imprisonment?

THE DEFENDANT: I do.

THE COURT: Now have you talked with your attorney, Ms. Carvlin, about the Sentencing Guidelines?

THE DEFENDANT: I have.

THE COURT: And do you understand that this Court will not be able to determine your sentence until after a presentence report has been completed by the probation office and you and the government have had a chance to challenge any of the facts reported by the probation office?

THE DEFENDANT: I understand.

THE COURT: Do you further understand that if you're

sentenced to prison, parole has been abolished and you will not be released any earlier on parole?

THE DEFENDANT: I do.

THE COURT: Do you understand, sir, that if your attorney or anyone else has attempted to estimate or predict what your sentence will be that their estimate or prediction could be wrong?

THE DEFENDANT: I do.

THE COURT: No one, Mr. Clark, not even your attorney or the government, can nor should give you any assurance of what your sentence will be. Your sentence cannot be determined until after the probation office report is completed and I've ruled on any challenges to the report and determined what sentence I believe is appropriate, giving due regard to all of the factors set forth in Section 3553(a). Do you understand that?

THE DEFENDANT: I do.

THE COURT: Do you also fully understand that even if your sentence is different from what your attorney or anyone else told you it might be, or if it's different from what you expect, that you'll still be bound to your guilty plea and you will not be allowed to withdraw your plea of guilty?

THE DEFENDANT: I do.

THE COURT: Now at the commencement of this proceeding I was handed this plea agreement. Have you signed it?

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1	THE DEFENDANT: I did.
2	THE COURT: And did you read this agreement before you
3	signed it?
4	THE DEFENDANT: I did.
5	THE COURT: Did you discuss this agreement with your
6	attorney, Ms. Carvlin?
7	THE DEFENDANT: Yes, we discussed it.
8	THE COURT: Did you fully understand this agreement at
9	the time that you signed it?
10	THE DEFENDANT: Yes, I did.
11	THE COURT: Does this agreement constitute your
12	complete and total understanding of the entire agreement among
13	the government, your attorney, and you?
14	THE DEFENDANT: Yes.
15	THE COURT: Is everything about your plea and sentence
16	contained in this agreement?
17	THE DEFENDANT: It is.
18	THE COURT: And has anything been left out?
19	THE DEFENDANT: Not that I know of.
20	THE COURT: Has anyone offered you any inducements or
21	threatened you or forced you to plead guilty?
22	THE DEFENDANT: Not in any way.
23	THE COURT: Now do you understand that under the terms
24	of this plea agreement you are giving up your right to appeal
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or otherwise bring a collateral challenge to your sentence if

this Court sentences you within or below the stipulated guidelines sentence of 240 months of imprisonment?

THE DEFENDANT: I do.

THE COURT: And do you understand further that you're also agreeing not to appeal if this Court imposes a fine that is less than or equal to \$1 million?

THE DEFENDANT: I do.

THE COURT: Do you also understand, sir, that I'm completely free to disregard any position or recommendation by your attorney or by the government as to what your sentence should be and that I have the ability to impose whatever sentence I believe is appropriate under the circumstances and you will have no right to withdraw your plea?

THE DEFENDANT: I do.

THE COURT: Ms. Carvlin, do you know of any valid defense that would prevail at trial or do you know of any reason why your client should not be permitted to plead guilty?

MS. CARVLIN: I know of no valid defenses that I believe would prevail, your Honor, nor do I have any other reason to believe that Mr. Clark should not enter this plea.

THE COURT: And Ms. Carvlin, is there an adequate factual basis to support this plea of guilty?

MS. CARVLIN: There is.

THE COURT: Mr. Neff, is there an adequate factual basis to support this plea of guilty?

MR. NEFF: There is, your Honor. We'd be happy to make a proffer if you --

THE COURT: In a few moments. After I hear from the defendant.

And so, Mr. Clark, at this time, please tell me what you did in connection with the narcotics conspiracy to which you're entering a plea of guilty.

THE DEFENDANT: Between around January of 2011 up till around October 2, 2013, I agreed with others to sell controlled substances, including heroin, cocaine, LSD, and methamphetamine, knowing that some of these drugs would be distributed in New York City.

THE COURT: And did you undertake this activity in connection with your affiliation with an underground website known as the Silk Road?

THE DEFENDANT: I did.

THE COURT: Did you understand that at the time that you did this, what you were doing was wrong and illegal?

THE DEFENDANT: I did.

THE COURT: All right. Mr. Neff, would the government briefly summarize its evidence against the defendant.

MR. NEFF: Yes, your Honor. Had the matter gone to trial, the government's evidence would include, among other things, exhibits introduced at Ross Ulbricht's trial, seizures of drugs purchased on Silk Road, undercover purchases of drugs

from the Silk Road, Silk Road server data, including from the
forum server, the marketplace server, and the Bitcoin server,
pertinent materials from Ross Ulbricht's laptop, including
chats with this defendant, travel records for this defendant,
journal entries describing how this defendant, through his
alias, was a real mentor, and a scanned encrypted copy of this
defendant's passport. The evidence would also include this
defendant's passport itself, which was seized in connection
with his arrest and extradition from Thailand, which matched;
testimony from witnesses, including a cooperating witness who
would identify the defendant as the person who operated the
Variety Jones and Cimon account on Silk Road. The evidence
would also include the defendant's oral and written statements
to law enforcement, as well as various documents in which the
defendant went by the name of Mongoose or a plural of Mongoose;
and in summary, this evidence would establish that Clark was
Ross Ulbricht's right-hand man for nearly two years, that Clark
advised Ulbricht about all aspects of Silk Road's operation,
including security, technical infrastructure, promotion of
sales, evading law enforcement. Clark also managed
programmers, and Clark urged and facilitated an attempted
murder for hire of a Silk Road employee suspected of stealing
Bitcoin from the website. The attempted murder for hire was in
fact Clark's idea, and he offered Ulbricht the services of a
potential hit man in connection therewith.

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For his various roles on Silk Road, Clark was paid hundreds of thousands of dollars, and I know Mr. Clark mentioned that drugs were sold in New York or delivered to New York City. We can be more specific. There were undercover purchases of drugs ordered from and delivered to this district.

THE COURT: Thank you, Mr. Neff.

Mr. Clark, at this time I'd ask you to stand once again.

Mr. Clark, how do you now plead to the lesser included offense of conspiring to distribute and possess with intent to distribute a quantity of mixtures and substances containing detectable amounts of heroin, cocaine, lysergic acid diethylamide (LSD), and methamphetamine, its salts, isomers, and salts of its isomers, in violation of Title 21 of the United States Code Sections 812, 841(a)(1), 841(b)(1)(C), and 846, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Are you pleading guilty because you are guilty?

THE DEFENDANT: I am.

THE COURT: Are you pleading guilty voluntarily and of your own free will?

THE DEFENDANT: I am.

THE COURT: Ms. Carvlin, do you wish me to make any further inquiries of your client?

MS. CARVLIN: No, your Honor.

THE COURT: Mr. Neff, does the government wish me to make any further inquiries of the defendant?

MR. NEFF: No, your Honor.

THE COURT: Mr. Clark, because you acknowledge that you are guilty of the lesser included offense and because I find you know your rights and are waiving them knowingly and voluntarily and because I find your plea is entered knowingly and voluntarily and is supported by an independent basis in fact containing each of the essential elements of the offense, I accept your guilty plea and adjudge you guilty of the narcotics conspiracy to which you've just pleaded.

You may be seated.

Now the U.S. Probation Office will next prepare a presentence report to assist me in sentencing you. You'll be interviewed by the probation office. It's important that the information you give the probation officer be truthful and accurate because the report is important in my decision as to what your sentence will be. You and your attorney have a right and will have an opportunity to examine the report, challenge or comment upon it, and to speak on your behalf before sentencing.

I'm going to set this matter down for sentencing on May 14 at 11 a.m.

Ms. Carvlin?

MS. CARVLIN: Yes, your Honor. I would ask for a longer sentencing date, and the reason for that is there are materials that I believe I will present to the Court in mitigation with respect to sentencing that are in other countries.

THE COURT: How much time do you --

MS. CARVLIN: I would say six months, your Honor.

THE COURT: Before I fix a sentencing date six months out and given this Court's intimate knowledge of your efforts on the defendant's behalf over the last several years in obtaining information from abroad, what I think I'd like to do is get a status report from you about your efforts by April 15th. You can submit a letter. For now, I will fix a sentencing date of May 29, but depending upon what you report to me, that date may well be adjourned. But I think we should have a going-forward date, and I'll set it down for May 29 at 11:00.

MS. CARVLIN: Thank you, your Honor.

THE COURT: And so I'm going to direct the government to promptly provide a prosecution case summary to the probation department. And obviously, in view of your request,

Ms. Carvlin, I think you should get started with probation, but I'm not going to require you to let them conduct that interview within the next few weeks. You can have them conduct that interview in a month or two. By then you may have some more

information for them.

MS. CARVLIN: Thank you. I'll advise the probation office of the schedule.

THE COURT: Very well.

Are there any other matters that counsel wish to raise?

MR. NEFF: Could we just have one moment, your Honor.

THE COURT: Yes. Take your time.

MR. NEFF: Thank you.

(Counsel conferring)

MS. CARVLIN: Yes, your Honor. One other matter. I would move to dismiss the motions that we filed, the motions to suppress evidence, at this point as moot.

THE COURT: All right. The defendant's application is granted. I can only say that I and my law clerks have reviewed all of those papers before we were alerted that an application might be forthcoming in this case to change the plea.

MS. CARVLIN: I'm sure that was a lot of work, your Honor.

THE COURT: Right. But that comes with the position that I hold. So I'm not complaining. In fact, I found the briefing to be quite informative and engaging, given the international scope of the transaction and the issues and the searches that were conducted of servers in Iceland and elsewhere.

1	MS. CARVLIN: I can say, your Honor, it was
2	fascinating to write.
3	THE COURT: All right. Very well then. This matter
4	is concluded. Have a good afternoon.
5	MS. CARVLIN: Thank you, your Honor.
6	MR. NEFF: Thank you, Judge.
7	THE DEPUTY CLERK: All rise.
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